

No. _____

In The
Supreme Court of the United States

—◆—
GAVIN B. DAVIS,

Petitioner,

v.

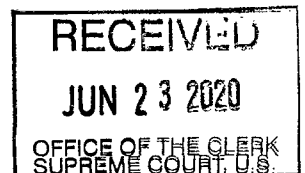
STATE OF CALIFORNIA,

Respondent.

—◆—
**On Petition for a Writ of Certiorari to the
Court of Appeal, California,
Fourth Appellate District, Division One**
—◆—

PETITION FOR A WRIT OF CERTIORARI

—◆—
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QUESTIONS PRESENTED

(1) Did the 4th Dist., Div. 1, Court of Appeal, California, err in its (a) inquiry and (b) application of *Boykin* / *Tahl*¹ analysis under its (c) “totality of circumstances” standard of review in relying on an (d) incomplete and erroneous factual record² in denying Appellant’s appeal of his timely and diligent Withdraw of Plea (April 23, 2018) efforts prior to Sentencing (June 7, 2018); where, Petitioner states that (e) there is substantially more than a reasonable probability³

¹ See *Boykin v. Ala.* 395 U.S. 238, 243 (1969); *In re Tahl*, 1 Cal.3d 122, 132 (1969)

² See e.g., D074186, Petition for Rehearing, with Attorney John O. Lanahan, commenting, in part, “the [c]ourt overlooked [Petitioner’s] statements in open court that contradicted, rather than supplemented, the waiver of rights he had initialed on the change of plea form” (pg. 5-6) and “minute orders and his own statements at the change of plea hearing show that he believed the only way he would be released was if he pleaded guilty,” (*Id.*, pg. 6) (Appendix F) in support that the factual basis and procedural background presented in the opinion are inaccurate including but not limited to overlooking such minute orders, actions and intent, and oral dialogue, where Petitioner at many instances in the record raised considerable doubt as to what rights he was waiving in exchange for his immediate (*i.e.* same day) own recognizance return to pre-trial liberty while not being provided the alternative (*i.e.* a bail review motion as previously repeatedly calendared); and, therefore, reliance on a partial and/or incorrect fact pattern

³ A low threshold without substantial burden of proof

had Petitioner (f) been at liberty⁴ subject to (i) reasonable and flexible bail⁵; or, (ii) been presented with the alternative to the Plea Hearing (*i.e.* a bail review hearing, as had been calendared three (3) times); he would have continued to trial on all matters (as still sought) and not entered into any Plea Agreement⁶, as entered into involuntary / coerced in direct exchange for that which he was already awaiting and is Constitutionally entitled to: his pre-trial liberty on reasonable terms and conditions; meeting the requisite standard of review under the proper application of such law)

⁴ Petitioner had: (a) made twenty-seven (27) non-duplicative court appearances while at liberty

⁵ Petitioner was held in pre-trial detention and custody for approximately six (6) months awaiting three (3) bail review motions calendared without filing or argument thereupon, on excessive, and punitive bail of One Million Dollars (\$1,000,000), believed to be the highest monetary bail in the history of California for one (1) “wobbler” charge, a non-violent Ca PC § 594(a) for property damage on his wholly-owned (*i.e.* non-communal) Recorded Homestead, of which he was the only occupant, as reduced to a misdemeanor on December 3, 2019, in CA SDC 266332, prior to issuance of the Remittitur of December 4, 2019, from CA 4th Dist., Div. 1, Court of Appeals.

⁶ A coerced and involuntary plea, April 23, 2018 (see D074186 Briefing, Appendix F-G); held by multiple parties as unlawful; and, separately grounds for automatic reversal of the judgment there upon, as petitioned herein on direct appeal before this Court.

(2) Is the State of California's precedence in regard to a Remittitur issuing from the appellate court to the trial court in a criminal proceeding relying wholly and improperly on (i) civil proceeding precedents; with (ii) delay⁷, unconstitutional and a violation of the due process clauses of the 5th and 14th Amendments, *while* such matter remains on direct appeal before the Supreme Court of the United States?

⁷ In this case and controversy, Petitioner took every conceivable action to timely withdraw his plea, to be construed liberally by precedence, moving diligently without delay – it is conceivable for a Remittitur to rightfully issue upon substantive delay – of which, does not exist in this situation. It is manifestly unjust and unconstitutional to issue a Remittitur when a party is continuing to move diligently on direct appeal, as in this controversy and its pendency.

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the Parties are as follow:

Petitioner, Mr. Gavin B. Davis (the “Petitioner” or “Mr. Davis”), is an individual that is a citizen of the United States of America. He holds a Bachelor of Science degree from Cornell University; has completed approximately Four Billion Dollars (US\$4,000,000,000) of complex corporate finance and real estate transactions; is a published author; is an industry speaker, including before such law firms as DLA Piper. Petitioner is a non-public figure who has fully maintained and sought a private, non-public life. Petitioner has no history of crime or violence, has not had a trial, let alone a fair tribunal, has maintained his innocence; and, has had his Constitutional rights egregiously violated.

Respondent, State of California, Department of Justice, Office of the Attorney General (“CA AG”) is the state’s top legal body, overseeing more than 4,500 lawyers, investigators, sworn peace officers, and other employees, in which such duties include representing the State in civil and criminal matters before trial courts, appellate courts and the supreme courts of California and the United States; who may be Served via last direct underlying attorney-of-record, Mr. Craig H. Russell (CSBN #199274), Office of the Attorney General, 600 W Broadway, Ste 1800, San Diego,

CA 92101-3375, T: (520) 612-5837;
Craig.Russell@doj.ca.gov.

Party in Interest, Mr. John O. Lanahan, (CSBN #133091, past head of the San Diego Criminal Defense Attorneys Association, Criminal Defense Attorney of the Year (2012, 2016), University of Chicago, J.D., Phi Beta Kappa), is counsel to the Petitioner in 4th Dist., Div. 1 (CA), case no.: D074186, from which this movement before the Supreme Court of the United States is directly taken. Service of Process of Mr. Lanahan may be completed at 501 W Broadway Ste 1510, San Diego, CA 92101-3526, T: (619) 237-5498.

Parties in Interest, the professional law firm of Ronis & Ronis, trial attorneys: Ms. Gretchen C. Von Helms (CSBN #156518, Harvard (B.A. (Government), J.D., Phi Beta Kappa), making the most recent appearance on behalf of the Petitioner in regard to these matters before the Superior Court of California, San Diego County; Mr. Jan E. Ronis. (CSBN #51450), most recently favorably disposing of a related case pre-trial (M242946DV, dismissed subject to Ca PC §802(a) on February 19, 2019) concerning the same parties and events from which this movement is brought before the Supreme Court, as latent and fraudulent; and, Mr. Jason A. Ronis (CSBN #229628), who has also appeared on behalf of the Petitioner in regard to these matters. Service of Process may be completed via Ms. Von Helms at, Ronis & Ronis, Senator Building, 105 West F Street, 3rd Floor, San Diego, Ca 92101, T: (619) 236-8344.

RELATED DIRECT PROCEEDINGS

Davis v. California, 19A726, U.S. Supreme Court, December 24, 2019, GRANTING extension to file Petition for a Writ of Certiorari.

Davis v. California, 19A914, U.S. Supreme Court, Feb. 14, 2020, application to timely (*i.e.* without material delay or passage of time) recall remittitur of CA 4th Dist., Div., 1, case D074186, pending final and full disposition of the case on direct appeal, as DENIED (Feb. 21, 2020), as refiled (Feb. 28, 2020), as Referred to the Court (Mar. 11, 2020), and thereafter, DENIED (Mar. 30, 2020) with no substantive writ issued.

California v. Davis, S258194, Supreme Court of California, Petition for Review, September 26, 2019, as DENIED for review on November 26, 2019.

California v. Davis, D074186, CA 4th Dist., Div. 1, Appeal of June 8, 2020, as DENIED, August 21, 2019. Petitioner's attorney, Mr. John O. Lanahan (CSBN #133091) filed a Petition for Rehearing⁸, on September 5, 2019 (denied September 10, 2019)

California v. Davis, SCD266332 / SCD273043, Superior Court of California, San

⁸ The Appellate Court has not in fact, gone through the Record, (*Douglas v. California*, 372 U.S. 353 (1963)), as put forth herein, as well as in the Petition for Rehearing citing to clear and glaring factual errors and other omissions with the Court of Appeal Opinion. See also, *O'Sullivan v. Boerckel*, 526 U.S. 838, 844-45 (1999), regarding exhaustion of state remedies, as satisfied in this case and controversy prior to movement before this Court.

Diego County (Central), involuntary coerced plea of April 23, 2018, and Sentencing of June 7, 2018.

RELATED COLLATERAL PROCEEDINGS

Petitioner cross-claim, *Davis v. SDDA et. al.*, 17-654, USDC SD Cal, 17-654; as appealed to the Ninth Circuit, 18-56202, generally, a 42 U.S.C. § 1983, Deprivation of Civil Rights case; which did not reach the merits (FRCP 8, 12 dismissal)

Petitioner cross-claim to a subsequent and dismissed pre-trial (Feb. 19, 2019, Ca PC § 802(a)) latent and fraudulent misdemeanor charge by the same alleged false victim witness⁹ intended to trip a probation violation and for other illicit purposes¹⁰, in *Davis v. O'Connor*, USDC SD Cal, 18-2824, generally, itself, a 42 U.S.C. § 1983, Deprivation of Civil Rights case; which did not reach the merits (FRCP 8, 12 dismissal) and is pending Ninth Circuit review, 19-55954. (note: this cross-claim, on its own is of considerable merit; however, not having been afforded a trial while held in protracted jeopardy in violation of the U.S. Constitution, and coerced into an unlawful plea, prior to, and the subject in this

⁹ Mr. John Gregory Unruh (Henderson, NV), alleged member of organized crime (Las Vegas Mafia), and faux informant on organized crime in federal WITSEC; see also, *United States of America v. J. Gregory Unruh*, USDC DA (1995); and, *Davis v. O'Connor*, 9th Cir., 19-55954 (e.g. ECF 8, 15 and briefing) pending

¹⁰ e.g. Petitioner has made a Civil Conspiracy claim, which remains pending.

Petition before this Court, only evidences with more gravity the importance of the procedural safeguards of the Constitutional Amendments concerning basic civil rights, a foundational rock bed of U.S. citizenship.)

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[*State of California*] v. *Davis*, Superior Court of California, Sentencing of June 7, 2018, in SCD266332 / SCD273043, sought to be reviewed by this Court (unpublished) (Appendix B);

[*State of California*] v. *Davis*, CA 4th Dist., Div. 1, D074186, Court of Appeal Briefing and Opinion of August 21, 2019. (unpublished, Appendix A)

[*State of California*] v. *Davis*, CA 4th Dist., Div. 1, D074186, Court of Appeal, Rehearing of September 5, 2019, as denied Sept., 10, 2019, (unpublished, Appendix D)

[*State of California*] v. *Davis*, Supreme Court of California, S258194, Petition for Review, September 26, 2019, as denied for review Nov., 26, 2019 (unpublished, Appendix C)

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JURISDICTION

Under Rule 10(c), a state court, the Fourth District Court of Appeal, Division 1, California, in case no.: D074186, [*State of California*] v. *Gavin B. Davis*, in its Judgment of August 21, 2019 (Petition for Rehearing, Sept. 5, 2019, denied Sept. 10, 2019; Petition for Review to the Supreme Court of California, denied on November 26, 2019) has decided an important federal question in a way that conflicts with relevant decisions of this Court. Pursuant to Rule 13, this

Petition for a Writ of Certiorari, is timely within 90 days of the November 26, 2019, Supreme Court of California discretionary order denying review, as amended by this Court on December 30, 2019 in *Davis v. California*, 19A726. The jurisdiction of this Court in this matter has been invoked in each of 19A726 and 19A914, and is also herein timely invoked under each of 28 U.S.C. § 1257(a) and 28 U.S.C. § 1651(a). (Rule 14.1(e))

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PRIMARY FEDERAL PROVISIONS INVOLVED

Pursuant to Rule 14.1(g)(i), the primary constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case, are noted below.

4th Amendment (pre-trial liberty); 8th Amendment (non-excessive bail); 7th Amendment (jury trial); 5th Amendment (due process); 14th Amendment (due process); and, 9th Amendment.

The unconscionable and deliberate actions of the State of California in violation of the Petitioner's Constitutional Rights as protected by the aforementioned Amendments and developed through a sound body of precedential case law henceforth in the judicial cannon are grounds for automatic reversal of State of California decision; and, present the prima facie case in regard to such.

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STATEMENT OF CASE

Gavin B. Davis respectfully petitions this Court for a writ of certiorari on direct appeal¹¹ to review the judgment of August 21, 2019, in the case of *California v. Davis*, 4th Dist., Div. 1, D074186. Petitioner moves under Rule 10(c).

This Petition before the Court regards federal constitutional claims, and perhaps the most egregious misuse of bail and custody ever in the modern history of the United States (see e.g., federal standing, *Jackson v. Virginia* 443 U.S. 307 (1979); *Estelle v. McGuire*, 502 U.S. 62, 69 (1991))—where such Constitutional violations by the Respondent of the Petitioner are of such severity and harm to rise far beyond mere ‘misapplication’ of any one procedural or statutory standard – and are grounds for automatic reversal by this Court.

After (i) making twenty-seven (27) non-duplicative court appearances (*i.e.* clearly engaged with the process of the law, and not evading the law, *prima facie*) at liberty in the matter from which Mr. Davis petitions this Court, while (ii) repeatedly having his monetary bail increased by the prosecution, (iii) flying several thousand miles out of jurisdiction for court on numerous occasions, (iv) Mr. Davis was held in pre-trial detention and custody on excessive, and

¹¹ See *Barefoot v. Estelle*, 463 U.S. 880, 887 (1983); cf. *Bell v. Maryland*, 378 U.S. 226, 232 (1964) (“In the present case the judgment is not yet final, for it is on direct review in this Court.”).

punitive bail of One Million Dollars (\$1,000,000), believed to be the highest monetary bail in the history of California for one (1) felony charge, a non-violent Ca PC § 594(a) for property damage on his wholly-owned (i.e. non-communal) Recorded Homestead for approximately (v) six (6) months awaiting (vi) three (3) bail review motions calendared without filing or argument thereupon¹², in violation of his 4th Amendment (pre-trial liberty) and 8th Amendment (non-excessive or punitive bail) rights.¹³ During this

¹² “[T]he court has said that the standard for determining the validity of a guilty plea “was and remains whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” (*North Carolina v. Alford*, *supra*, 400 U.S. at p. 31 [27 L.Ed.2d at p. 168], citing *Boykin*, *supra*, 395 U.S. at p. 242 [23 L.Ed.2d at p. 279]; see also *Brady v. United States*, *supra*, 397 U.S. at pp. 747-748 [25 L.Ed.2d at pp. 755- 756].)” *People v. Howard* (1992)

¹³ A question of public importance (28 U.S.C. §§ 1657, 2101(e)) (also a “first impression” question, with the great potential for Circuit Court split absent this Court’s Opinion.) See e.g. *Brittan Holland; Lexington National Insurance Corporation, v. Kelly Rosen, Mary Colalillo, Christopher S. Porrino*; 3rd Cir., No. 17-3104, (2018), which found no constitutional requirement for monetary bail, rendering such as “a product of economic opportunity” and cited instances in which the use of money to secure a person’s release has been criticized as “discriminatory, arbitrary and ill-suited to ensuring a defendant’s appearance in court,” and also stating, “monetary bail often deprived presumptively innocent defendants o their pretrial liberty, a result that surely cannot be fundamental to preserving ordered liberty”

period, Mr. Davis personal and professional life were obliterated, suffering irreparable harm and injury.

In direct exchange for a plea, Mr. Davis was released from custody on April 23, 2018 with no¹⁴ other terms and conditions of bail (*i.e.* no bonding, released on his own recognizance; separately, *prima facie* evidence of the misuse of bail and custody) and allowed to immediately leave each of the county and state jurisdiction and return for sentencing on June 7, 2018. Mr. Davis immediately sought to withdraw the plea, deemed as each of involuntary, coerced and unlawful, and was denied on June 7, 2018. On June 8, 2018, Mr. Davis filed a Notice of Appeal with the Superior Court of California, San Diego County and requested a Certificate of Probable Cause pursuant to Ca PC § 1237.5¹⁵; which the Superior Court issued on June 19, 2018, and the

¹⁴ Emphasis added.

¹⁵ “If an appellant persuades an appropriate tribunal that probable cause for an appeal exists, he must then be afforded an opportunity to address the underlying merits.” *Garrison v. Patterson*, *supra*, at 391 U. S. 466 (per curiam). See *Nowakowski v. Maroney*, *supra*; *Carafas v. Page* 463 U. S. 889. To wit, a certificate of probable cause issued for an appeal of a trial proceeding in question, where no trial has occurred, a 7th Amendment right, inherently requires such trial, itself, at the trial court, in order to reach the underlying merits—or else, in such absence, procedural due process, under each of the 5th and 14th Amendments has been prejudicially and prematurely foreclosed subjugating the most basic rights of a criminally accused.

4th Dist., Div. 1, opening case no.: D074186 on June 22, 2018.

There are no other set of actions that any person could have reasonably taken to timely withdraw a plea. Further, there are virtually no other set of actions or circumstances, which more profoundly demonstrate the unlawful and unconstitutional misuse of bail, custody and pre-trial detention (contemporary federal and national state issues with significant broad reaching bail reform legislation pursued and enacted seeking to prevent the exact types of behavior exhibited by the Respondent in this case and controversy)

The standard of review in the judicial cannon when applying *Boykin* / *Tahl* analysis, is very simple in most respects, and in application to this situation, needlessly complicated by the 4th Dist., Div. 1, California Court of Appeal, namely: the standard for determining the validity of a guilty plea “was and remains whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” (*North Carolina v. Alford, supra*, 400 U.S. at p. 31 [27 L.Ed.2d at p. 168], citing *Boykin, supra*, 395 U.S. at p. 242 [23 L.Ed.2d at p. 279]; see also *Brady v. United States, supra*, 397 U.S. at pp. 747-748 [25 L.Ed.2d at pp. 755-756].)” *People v. Howard* (1992)) – namely, in this case, a bail review. Any reasonable person of jury would clearly find in favor of the Petitioner: he was patiently awaiting to be released to pre-trial liberty while clearly, beyond any and all reasonable doubt, was engaged with the process of the law, in continuing to dispute all charges; and, also timely seeking to withdraw the plea

once provided that which he was already entitled, his pre-trial liberty on flexible, non-excessive, reasonable, non-punitive terms and conditions of bail.

The 4th Dist., Div. 1 Court of Appeal's (CA) Opinion (August 21, 2019) in not liberally allowing for and granting a Withdraw of the April 23, 2018 Plea, as sought, after being held on excessive, punitive and unreasonable bail of One Million Dollars (\$1,000,000), several magnitudes of order off the bail schedule, while facing one non-violent felony charge for property damage on Petitioner's wholly-owned Record Homestead is (a) an error that has a "substantial and injurious effect or influence in determining the jury's verdict [or the prejudice of a non-satisfactory verdict / judgment absent the benefit of a jury trial in the form of a plea agreement, *prima facie*]"; and, (b) is contrary to, or involved an unreasonable application of, clearly established federal law¹⁶, as determined by the Supreme Court of the United States; where Petitioner had, in priority, his: Fourth (pre-trial liberty), Eighth (non-Excessive or Punitive bail), Fifth (Due

¹⁶ "For its part, *Alford* states that *United States v. Jackson* (1968) 390 U.S. 570 [20 L. Ed. 2d 138, 88 S. Ct. 1209], "established no new test for determining the validity of guilty pleas. The standard was and remains whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." (400 U.S. at p. 31 [27 L.Ed.2d at pp. [1 Cal. 4th 1200] 167- 168].)" (citation omitted) Petitioner was not afforded bail review (i.e. the alternative to the plea as timely contested and withdrawn), as diligently sought, while held on Excessive Bail for six (6) months.

Process), Fourteenth (Due Process), Seventh (Jury Trial) and even Ninth Amendment, rights violated.¹⁷ (see e.g. 28 U.S.C. § 2254(d)(1))

The interests of justice and the Constitutional Rights of the Petitioner mandate automatic summary reversal of the judgment in question as upheld in D074186. In the absence of such, the Petitioner continues to suffer at the hands of the State of California without timely and appropriate redress, in whole, or in part.



REASONS FOR GRANTING THIS PETITION

I. PETITIONER HAS STEADFASTLY MAINTAINED HIS INNOCENCE AND NOT HAD A TRIAL AS SOUGHT, WHERE THE U.S. CONSTITUTION COMPELS AUTOMATIC REVERSAL

The underlying state proceedings have not satisfied due process (*Holley*, 568 F.3d at 1101 (citing *Jammal v. Van de Kamp*, 926 F.2d 918, 919-20 (9th Cir. 1991)), irrespective of substantial abuses of process in such underlying proceedings; while the Respondent held the Petitioner in protracted jeopardy on the highest monetary bail ever for the charge in question, causing serious

¹⁷ The factual basis (dates, events) and argument further supporting the aforementioned is cited to in the Petition for Review to the Supreme Court of California, S258194 (Appendix E) satisfying Rule 14.1(g)(i))

harm and injury in clear and egregious violation of this Constitutional rights as protected by the 4th and 8th Amendments. Through coercion, Respondent freely released the Petitioner on his Own Recognizance (emphasis) with no other terms and conditions of bail, while Petitioner awaited bail review, as calendared on three (3) separate occasions over a six-month period, but never filed in writ or argued before the Superior Court of California. No reasonable person of a jury would find that the Petitioner has endured an actual legitimate binding conviction of any sorts.

“When constitutional error calls into question the objectivity of those charged with bringing a defendant to judgment, a reviewing court can neither indulge a presumption of regularity nor evaluate the resulting harm. Accordingly, when the trial judge is discovered to have had some basis for rendering a biased judgment, his actual motivations are hidden from review, and we must presume that the process was impaired. See *Tumey v. Ohio*, 273 U. S. 510, 273 U. S. 535 (1927)” (citation omitted)

“A defendant claiming ineffective assistance of counsel must show that counsel's incompetence caused him actual prejudice. *Strickland v. Washington*, 466 U. S. 668, 466 U. S. 687 (1984).” In this case, having a bail review calendared and not heard on multiple occasions over a protracted period meets a prima facie cause of clear prejudice. (see e.g. *United States v. Frady*, 456 U. S. 152, 456 U. S. 170 (1982); see also *Wainwright v. Sykes*, 433 U. S. 72 (1977)) As well, these Constitutional violations of the Petitioner by the Respondent and underlying

process are not harmless in any uncertain capacity.

To wit, this case is the quintessential opportunity for the Supreme Court to deter unconstitutional conduct by state officials; where the remedy, is rather quite simple: allow a withdraw of plea under a totality of circumstances when presented the alternatives, namely a bail review, and proceed to trial on all allegations against a citizen brought by a state, as sought. (see e.g. *United States v. Leon*, supra, at 468 U. S. 906-907; *Stone v. Powell*, supra, at 428 U. S. 489.) Further, the misuse of bail and pre-trial custody is a matter of national and state importance (28 U.S.C. §§ 1657, 2101(e)) (also a “first impression” question, with the great potential for Circuit Court split absent this Court’s Opinion, as the Third Circuit has recently published a 52-page Opinion centered around the Constitutionality of Bail and on Constitutional protections related to crimes (*Brittan Holland; Lexington National Insurance Corporation, v. Kelly Rosen, Mary Colalillo, Christopher S. Porrino*; 3rd Cir., No. 17-3104, (2018)), which found no constitutional requirement for monetary bail, rendering such as “a product of economic opportunity” and cited instances in which the use of money to secure a person’s release has been criticized as “discriminatory, arbitrary and ill-suited to ensuring a defendant’s appearance in court,” and also stating, “monetary bail often deprived presumptively innocent defendants of their pretrial liberty, a result that surely cannot be fundamental to preserving ordered liberty”)

**II. AS NO TRIAL OCCURRED, THERE
HAS LITERALLY BEEN NO FINDINGS OF
FACT FOR RELIANCE PURPOSES, AS
STILL DISPUTED, NECESSITATING
DIRECT APPEAL TO THE SUPREME
COURT OF THE UNITED STATES.**

While there is a presumption of correctness¹⁸ at the outset of movement before this Court from the underlying proceedings, (i) no clear and convincing evidence has been presented by the Respondent in the underlying proceedings in which (ii) there has also been no trial (i.e. summary abridgement of due process, and a clear showing of prejudice).

As a result, of the factual dispute never tested at the trial level, as sought; never brought before, a jury, as sought, Petitioner, in no uncertain terms has a right to a de novo review of the record; including components outside of the record (see e.g. Petitioner's hand-written November 2017 Bail Review Motion, as docketed in USDC SD Cal, 19-2263, Doc. 2; and April 23, 2018 hand-written Plea Rider, as docketed, *Id.*, Doc. 3) (also at Appendix L)

Further, "[i]n *Rose v. Mitchell*, supra, the Court reasoned that the rule of automatic reversal imposes limited costs on society, since the State is able to retry successful petitioners, and since "the State remains free to use all the

¹⁸ 28 U.S.C. § 2254(e)(1); see also *Parke v. Raley*, 506 U.S. 20, 35 (1992)

proof it introduced to obtain the conviction in the first trial." *Id.* at 443 U. S. 558." (citation omitted)

Petitioner has not been afforded a full and fair opportunity to litigate his legal positions; having his Constitutional rights, the most fundamental of civil rights, ironically, though sadly, resting on the bloodshed of American colonists and Federalists believing in Liberty and the idea of a Federal Republic as put forth in the Federalist Papers, enshrined in order to provide the procedural safeguards to ensure fundamental fairness against the state; and, in this case and controversy, a state that looks shockingly akin to the types of oppressive and unlawful behaviors and actions that gave rise to this Mighty Republic in the first place.

III. PRESERVATION OF CONSTITUTIONAL RIGHTS DURING THE FINAL AND FULL PENDENCY OF A DIRECT CRIMINAL APPEAL FROM A STATE PROCEEDING

The underlying cases (i.e. CA 4th Dist., Div. 1, D074186) are on direct appeal ("*Barefoot v. Estelle*, 463 U.S. 880, 887 (1983); cf. *Bell v. Maryland*, 378 U.S. 226, 232 (1964) ("In the present case the judgment is not yet final, for it is on direct review in this Court."))

Petitioner was held in pre-trial detention and custody after making twenty-seven (27) non-duplicative court appearances at liberty (i.e. clearly engaged with the process of the law) on the highest monetary bail ever in the history of California for the criminal allegations, as

disputed then¹⁹, and now, seeking a jury trial, as never provided,

IF, any movement before this Court, on Direct Appeal, as precedential (per this Court's own authority above), itself TIMELY²⁰, it is imperative that an accused's Constitutional rights not be summarily abridged in denying a Motion to Recall a Remittitur and Stay a lower court mandate (e.g. 4th Dist., Div. 1, D074186), as sought (i.e. 19A914). IF, Denied, as Denied (Mar. 30, 2020), an accused rights are summarily abridged and foreclosed with punitive and unlawful finality (e.g. in California it is necessary for an appellate court mandate to be stayed, and no issue of a remittitur, in order to preserve the

¹⁹ There are no more clear set of actions that Petitioner, or any one person could take to withdraw a plea; which, also, CA 4th Dist., Div. 1, case no.: D074186 retained attorney to Petitioner, Mr. John O. Lanahan (CSBN #133051, U. of Chicago, J.D., Phi Beta Kappa), found that the opposition unlawfully induced an involuntary and coerced plea in exchange for that which Petitioner was rightfully entitled, his pre-trial liberty as protected by the 4th and 8th Amendments and the cannon.

²⁰ Distinguished, as to requests for Remittitur's to be recalled with some discernible break in time. In this case, Petitioner is continuing to diligently move, in good faith, on Direct Appeal, prima facie—during such period, until all due process is availed, Petitioner has a Constitutional right for the Remittitur to remain in place. California's policy, therefore, on issuing Remittitur's is patently unconstitutional and in violation of the 5th and 14th Amendments; and additionally in this case and controversy, also the 7th and 9th Amendments.

prospect to strike prior briefing and have a new briefing (*People v. Johnson*, supra, 123 Cal.App.3d 106, 111 (1981); *People v. Von Staich*, 101 Cal.App.3d 172, 175 (1980))(note: Petitioner has indicated that trial counsel, Ronis & Ronis, was ineffective in assistance Petitioner, after having three (3) bail review hearings calendared over an approximate six (6) month time period and never filed in writ or argued orally)(the misuse of monetary bail remains an important state and national (see e.g. *Davis v. SDDA et. al.*, Ninth Circuit 18-56202, Opening Brief and Supplemental Brief)

Further, IF further proceedings in the trial court are ordered (e.g. Petitioner seeks an automatic reversal given egregious violations of his Constitutional rights), the scope of the trial court's authority is limited²¹ by the terms of the remittitur. (Ca. Code Civ. Proc., § 43; *Griset v. Fair Political Practices Com.*, 25 Cal.4th 688, 701 (2001); *Hampton v. Superior Court*, 38 Cal.2d 652, 656 (1952); *Puritan Leasing Co. v. Superior Court*, 76 Cal.App.3d 140, 147 (1977); cf. *People v. Rosas* 191 Cal.App.4th 107 (2010) (authority to lower restitution order even if that issue not addressed on original appeal).) This is true even if a later decision of a higher court casts doubt on the correctness of the decision. (*People v. Dutra*, 145 Cal.App.4th 1359 (2006)).

The aforementioned, therefore, in the case of a direct criminal appeal, as this matter is, is patently unconstitutional and a 5th and 14th Amendment Due Process right—importantly

²¹ i.e. de facto summary abridgement of important rights

distinguished from a long passage of time and only thereafter moving to recall a remittitur²². Further, as the Petitioner was involuntary and unlawfully coerced into a plea by the opposition, having been afforded no trial, as protected by the 7th Amendment, California's case law authorities in the prior paragraph in the context of a direct criminal appeal, are unconstitutional, *prima facie*.

◆

CONCLUSION

For these reasons, good cause, and in the interests of justice, the petition for a writ of certiorari should be granted.

Respectfully submitted, on this day, June 15, 2020.

/s/ Gavin B. Davis
GAVIN B. DAVIS, PRO PER

²² In criminal cases, a petition for writ of habeas corpus *may* be the vehicle for requesting the remittitur be recalled. (*People v. Mutch*, 4 Cal.3d 389, 396-397 (1971); *In re Smith* 3 Cal.3d 192, 203-204 (1970); *People v. Valenzuela*, 175 Cal.App.3d 381, 388 (1985), disapproved on other grounds in *People v. Flood*, 18 Cal.4th 470, 484-490, fn. 12 (1998)). HOWEVER, a distinction is drawn in reference to California's policy and precedent, where a remittitur issues while a criminal case *remains* on direct appeal to a higher court as unconstitutional, given that it has direct bearing on any other case brought by the State of California against such person (i.e. summary abridgment of due process and other rights).

